IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

APPEAL NO. 182 OF 2006
IN
NOTICE OF MOTION NO. OF 2006
IN
SUIT (LODG.) NO. 577 OF 2006

Asset Reconstruction Company (India)Limited ...Appellant

V/s.

Shree Rama Multi-Tech Limited & Ors. ...Respondents.

Mr. Janak Dwarkadas with Mr. Prateek Seksaria and
Mrs. Rajashree Rastogi instructed by
M/s. Manilal Kher Ambalal & Co. for the Appellant

Mr. R.A. Dada, Senior Counsel, with Mr. Rahul Chitnis,
Mr. Nandish Chudgav, Mr. Chakrapani Misra and Mr. Aditya
Khanna instructed by M/s. Khaitan & Co.
for Respondent Nos. 1 and 3.

CORAM: KSHITIJ R. VYAS, C.J., &
ABHAY S. OKA, J.
DATE: JUNE 12, 2006.

P.C.:-

1. This appeal is directed against the order dated 27th February, 2006 in the Notice of Motion.

2. In the Notice of Motion taken out in Suit (Lodging) No. 577 of 2006, the plaintiffs prayed as under:-

“(a) pending the hearing and final disposal of the present suit, this Hon'ble Court be pleased to pass order and direct the Defendants:

(i) to appoint Mr. Kamal Khera as Nominee Director of the Plaintiff on the Board of Directors of the Defendants in terms of the Notice of the Plaintiff dated 29th December, 2005.

(ii) to issue an order and injunction restraining the Defendant No. 1, their servants and/or agents and/or anybody acting through or under them from in any manner whatsoever changing the management of the Defendant No. 1 without the prior approval of the Plaintiff;

(iii) to convert Rs.3,75,00,000 lakh (sic) into fully paid-up equity shares of Rs.5 each at par in terms of the Plaintiff's notice of conversion dated 29th December 2005 and issue share certificates in respect of the same and enter the name of the Plaintiff in the register of members.

(iv) That this Hon'ble Court be pleased to restrain the Defendant No. 1 from holding any Board Meeting and

more particularly the Board meeting which is likely to be held on 27th February 2006.

(v) that this Hon'ble Court be pleased to restrain the Defendant No. 1 from permitting Defendant Nos. 4 and 5 from in any manner participating in the said meeting dated 27th February 2006 or any other meetings and/or exercising any powers in their alleged capacity as Directors of Defendant No. 1.

(vi) for ad-interim reliefs in terms of prayers (a)(i) to (a)(v) above;"

3. The learned Single Judge, by the aforesaid order, has granted ad-interim relief in terms of prayer clause (a)(ii). As far as relief (a)(iv) is concerned, limited relief is granted in the sense that defendant Nos. 4 and 5 can be allowed to participate in the meeting without having any power to vote. The appointment of defendant Nos. 4 and 5 will be subject to the final outcome of the Notice of Motion.

4. Today, during the course of the hearing, learned counsel Mr. Dada, appearing for respondent Nos. 1 and 3, placed on record the letter dated 9th May, 2006 addressed by respondent No. 1 to the appellant,

referring to the letter dated 29th December, 2005 addressed by the appellant to appoint Mr. Kamal Khera as Nominee Director on the Board of Directors of respondent No. 1-Company. In view of this, prayer (a)(i) in the Notice of Motion is allowed.

5. Learned counsel Mr. Dwarkadas, appearing for the appellant, submitted that by nominating defendant Nos. 4 and 5, the respondents have blocked others to be nominated; and therefore, nomination of said defendants, though not allowed to vote, is against the interest of the appellant and others.

6. Since the motion is pending before the learned Single Judge, in our opinion, it is neither desirable nor proper for this Court to enter into merits by deciding the contention advanced before us. Suffice it to say that the contention, if raised, shall be decided in the Notice of Motion.

7. The appeal is accordingly disposed of. The statements made by respondent Nos. 4 and 5 in the orders dated 22nd March, 2006 and 3rd May, 2006 no longer survive in view of the disposal of the appeal.

CHIEF JUSTICE

ABHAY S. OKA, J.